

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARSHA HUARD,

Plaintiff,

STIPULATION OF SETTLEMENT
AND ORDER OF DISMISSAL

vs.

06-cv-0051S(Sr)

Lt. ROBERT WHELAN,
BUFFALO POLICE DEPARTMENT,
Chief MICHAEL BENSON,
ERIE COUNTY HOLDING CENTER,

Defendants.

WHEREAS, plaintiff MARSHA HUARD filed a complaint dated March 6, 2007, alleging that defendants had violated plaintiff's constitutional, statutory, and/or civil rights in connection with her arrest and prosecution in 2006; and

WHEREAS, the Complaint was dismissed as to Defendants BENSON and ERIE COUNTY HOLDING CENTER on May 8, 2006; and

WHEREAS, Defendant WHELAN and Plaintiff have stipulated to the dismissal of this action on February 8, 2008; and

WHEREAS, the remaining parties are interested in resolving all of the issues alleged in the complaint in this action and have negotiated in good faith for that purpose; and

WHEREAS, none of the parties to the above-captioned action is an infant or incompetent person; and

WHEREAS, the parties in the above-captioned matter are desirous of discontinuing the litigation;

IT IS HEREBY STIPULATED AND AGREED by and between the parties and/or their respective counsel as follows:

1. The parties hereby agree that the above-captioned action is dismissed and discontinued with prejudice pursuant to Rule 41(a) of the Federal Rule of Civil Procedure.
2. Any and all of the claims for damages by plaintiff against Defendant City of Buffalo and Buffalo Police Department which are the subject of this action or otherwise arise out of any of the incidents alleged in the complaint are hereby settled for the sum of Two Thousand Dollars (\$2,000.00) in full satisfaction of all claims for damages, costs, disbursements and legal fees.
3. The Two Thousand Dollars (\$2,000.00) recited in paragraph #2 hereinabove shall be drawn as follows: a Two Thousand Dollar (\$2,000.00) check to the order of the plaintiff, MARSHA HUARD, mailed to her attorney, Anna Marie Richmond, Esq., at PO Box 1215, Buffalo, NY 14213.
4. In consideration of the payment of the sum recited in paragraph #2 hereinabove, the plaintiff, MARSHA HUARD has executed a release of the Defendants, which is attached hereto as Exhibit A.
5. Nothing in this So-Ordered Stipulation of Settlement shall be construed as an admission or concession of liability whatsoever by any of the defendants or by the City of Buffalo or the Buffalo Police Department regarding any of the allegations made by the plaintiff in her complaint herein that the plaintiff's rights under the Federal or New York State Constitutions or Statutes had been violated.
6. Payment of the amount recited in paragraph #2 hereinabove is subject to the approval of the Common Council of the City of Buffalo and the Mayor of the City of Buffalo pursuant to §16-14 of the Charter of the City of Buffalo.

7. This Stipulation of Settlement and any Order entered thereon shall have no precedential value or effect whatsoever and shall not be admissible in any other action or proceeding as evidence or for any other purpose, except in an action or proceeding to enforce this Stipulation of Settlement.

8. Payment of the amounts recited in paragraph #2 hereinabove will be met within one hundred twenty (120) days after the approval of this stipulation by the court receipt by defendants' counsel of a copy of the fully executed So-Ordered Stipulation of Settlement and Order of Dismissal as entered by the Court. In the event that the aforesaid payment is not made within the one hundred twenty (120) day period, interest shall accrue on the outstanding principle balance at the rate set forth in 28 U.S.C. § 1961 beginning on the one hundred twenty-first after entry of this "so ordered" stipulation of settlement in the electronic records of this action.

9. This Stipulation of Settlement embodies the entire agreement of the parties in this matter.

/s/ Timothy A. Ball

TIMOTHY A. BALL, ESQ.
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Dated: February 11, 2008

/s/ Anna Marie Richmond

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Dated: February 11, 2008